



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

ACQUISITION AND  
TECHNOLOGY

April 14, 1999

DP(DAR)

In reply refer to  
DAR Tracking Number: 98-00013

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN(RD&A)/ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
COMMANDER, DEFENSE CONTRACT MANAGEMENT COMMAND,  
DEFENSE LOGISTICS AGENCY

SUBJECT: Class Deviation-Commercial Item Omnibus Clauses for  
Acquisitions Using the Standard Procurement System

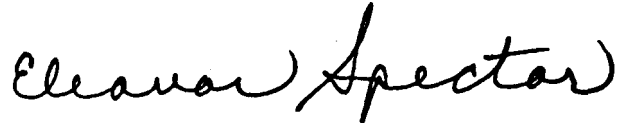
Effective immediately, all Department of Defense contracting activities may deviate from the requirements in Federal Acquisition Regulation (FAR) 12.301(b)(4), the clause at FAR 52.212-5, Defense FAR Supplement (DFARS) 212.301(f)(iii), and the clause at DFARS 252.212-7001, when using the Standard Procurement System (SPS) version 4.1.a, and subsequent versions, to contract for commercial items under the procedures of FAR Part 12 and DFARS Part 212.

FAR 12.301(b)(4) requires contracting officers to include the clause at 52.212-5 in solicitations and contracts for commercial items, and to identify any of the clauses listed in paragraph (b) or (c) that are applicable to the specific acquisition. DFARS 212.301(f)(iii) requires contracting officers to include the clause at 252.212-7001 in solicitations and contracts for commercial items, and to complete paragraph (b) to identify any applicable clauses.

Contracting officers may use SPS clause logic to select automatically the clauses in paragraph (a), and identify automatically any applicable clauses in paragraphs (b) and (c), of the clause at FAR 52.212-5. Further, contracting officers may use SPS clause logic to select automatically the clause in paragraph (a), and identify automatically any applicable clauses

in paragraph (b), of the clause at DFARS 252.212-7001. When using these procedures, contracting officers shall use the attached clauses, containing audit and subcontract clause requirements applicable to commercial items, in lieu of the clauses at FAR 52.212-5 and DFARS 252.212-7001.

This class deviation is approved until April 30, 2001, or until the DFARS is revised.

A handwritten signature in black ink, reading "Eleanor Spector". The signature is fluid and cursive, with the first name "Eleanor" and the last name "Spector" clearly distinguishable.

Eleanor R. Spector  
Director, Defense Procurement

Attachment:  
As stated

cc: DSMC, Ft. Belvoir

**FAR 52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT  
STATUTES OR EXECUTIVE ORDER-COMMERCIAL ITEMS (XXX 1999)  
(DEVIATION)**

(a) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (a) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times, the records, materials, and other evidence. for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(b) The Contractor is not required to include any FAR clause, other than those listed below (and as 'may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components-

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212);

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793); and

(4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(End of clause)

**DFARS 252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (XXX 1999) (DEVIATION)**

In addition to the clauses listed in paragraph (b) of the Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items (DEVIATION) clause of this contract, the Contractor shall include the terms of the following clause, if applicable, in subcontracts for commercial items or commercial components, awarded at any tier under this contract:

252.225-7014 Preference for Domestic Specialty Metals, Alternate I (10 U.S.C. 2241 note).

(End of clause)